

**Notice of Allowability**

Application No.

09/426,783

Examiner

Ashwin Mehta

Applicant(s)

GONSALVES ET AL.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers received 15 March 2004 and 19 December 2003.
2. ☒ The allowed claim(s) is/are 4-9 and 19.
3. ☒ The drawings filed on 19 December 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 4062004.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

***Claim Objections and Rejections***

1. The objections to claims 5 and 9 are withdrawn in light of the claim amendments.
2. The rejection of claims 4-9 under the judicially created doctrine of obviousness-type double patenting is withdrawn in light of the terminal disclaimer.
3. The rejection of claims 4-9 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph is withdrawn, in light of the claim amendments.
4. The rejections of claims 4-9 under 35 U.S.C. 112, 1<sup>st</sup> paragraph are withdrawn, in light of the claim amendments.

***Examiner's Amendment***

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Edwin Merkel on April 6, 2004.

The application has been amended as follows:

In the claims:

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4. A DNA construct comprising a DNA molecule and transcriptional and translational regulatory sequences operably linked to the DNA molecule, the DNA molecule being modified from a nucleotide sequence [form] encoding a nucleocapsid protein of an L serogroup *Tospovirus*, said DNA molecule being [to be] capable of transcription to a nontranslatable messenger RNA that does not translate to said nucleocapsid protein wherein, when the DNA construct is transformed into a plant cell, the DNA molecule is transcribed into the nontranslatable messenger RNA which exists at low level density readings of 15-50 as measured using a scanner and image analysis program, and confers resistance to said plant cell against an L serogroup *Tospovirus*.

Applicant is notified that the following amendment has been made to the specification:

On page 1, the first paragraph appearing below the title of the invention has been amended as follows:

This application is a continuation of U.S. Patent Application Serial No. 08/495,484, now U.S. Patent No. 6329568, filed September 25, 1995, as a national stage application of PCT Application No. PCT/US94/01046 filed January 27, 1994, which claims the priority benefit of U.S. Patent Application Serial No. 08/010,410 filed January 29, 1993, now abandoned.

6. Claims 4-9 and 19 are allowed.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ashwin Mehta whose telephone number is 571-272-0803. The examiner can normally be reached from 8:00 A.M to 5:30 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at 571-272-0804. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and 703-872-9307 for After Final communications. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 6, 2004



Ashwin D. Mehta, Ph.D.  
Primary Examiner  
Art Unit 1638